

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DETRICK C. CONERLY,

Petitioner, CASE NO. 04-50023

v.

UNITED STATES OF AMERICA, HONORABLE SEAN F. COX
U.S. DISTRICT JUDGE

Respondent.

ORDER DENYING PETITIONER'S MOTIONS

On November 23, 2004, Defendant was sentenced to 21 months' imprisonment, to be followed by a five-year term of supervised release, on his conviction for filing a false loan application. Following his release from prison, Defendant was arrested and indicted for attempting to defraud a credit union. *See United States v. Detrick Conerly*, Case No. 06-20140 (E.D. Mich.). Defendant was simultaneously charged with violating the terms of his supervised release. *See United States v. Detrick Conerly*, Case No. 04-50023 (E.D. Mich.). Defendant ultimately pleaded guilty to the new indictment and admitted the violations charged in the supervised release violation petition.

On May 21, 2007, Defendant was sentenced on both cases. As to the conviction, Defendant received a term of 24 months' imprisonment, to be followed by a four-year term of supervised release. As to the supervised release violation, Defendant "was committed to the custody of United States Bureau of Prisons to be imprisoned for a total term of 30 months." [Case No. 04-50023, docket entry #45]. No further term of supervised release following his imprisonment was imposed

on this charge. However, the term of imprisonment on the supervised release violation was to be served consecutively to the term of imprisonment on the new conviction.

On November 11, 2007, Defendant filed a “Motion for Adjustment of Supervised Release.” [docket entry #47]. The Court denied that motion in an order dated February 26, 2008.

Now before the Court is Defendant’s March 7, 2008, “Motion to Alter or Amend Judgment Rule 59(e)” [docket entry #51]; March 12, 2008, “Motion for Modification of Supervised Release Rule 32.1” [docket entry #52]; March 24, 2008, “Motion for Instanter Review of Pro Se Petitioner’s Rule 32.1 Motion and Rule 59(e) Motion” [docket entry #54]; and his June 12, 2008, “Motion for Summary Judgment” [docket entry #59]. Petitioner also filed a notice of appeal on May 12, 2008, seeking review of the “judgment” “entered in this action on denial of 59(e) and 32.1.” Notice of Appeal [docket entry #55].

The Court begins by noting the confusing posture of the case. Defendant has filed a Notice of Appeal. It is well “settled law that filing a notice of appeal with the district court divests the district court of jurisdiction to act in a case, except on remedial matters unrelated to the merits of the appeal.” *Fort Gratiot Sanitary Landfill, Inc. v. Mich. Dep’t of Natural Res.*, 71 F.3d 1197, 1203 (6th Cir. 1995). Therefore, if Defendant’s motions seek consideration of the same merits presented in the appeal, this Court lacks jurisdiction. *Id.* Indeed, Defendant’s notice of appeal purports to appeal the “judgment” “entered in this action on [the] denial of 59(e) and 32.1.” Notice of Appeal [docket entry #55]. However, the Court has not issued any judgment or orders with respect to his “Motion to Alter or Amend Judgment rule 59(e),” his “Motion for Modification of Supervised Release Rule 32.1,” or his “Motion for Instanter Review of Pro Se Petitioner’s Rule 32.1 Motion

and Rule 59(e) Motion.” Accordingly, to the extent that Defendant’s notice of appeal fails to seek review of one or more appealable orders—because there are no orders on these issues yet—the Court will proceed as though it has jurisdiction to consider the merits of these motions.

After considering each of Defendant’s motions, the Court finds they have no merit. Defendant’s first motion seeks to alter or amend the judgment, pursuant to “Rule 59(e).” The Court notes that there is no Federal Rule of Criminal Procedure “59(e)” and that Federal Rule of Civil Procedure 59(e) has no application in this criminal context. Furthermore, to the extent that Defendant seeks to reargue the claims made in his November 11, 2007 motion, the Court reaffirms the denial of that motion for both, the reasons stated in the Court’s February 26, 2008 order, and the reasons stated in the Government’s February 25, 2008 brief. Defendant’s second motion, “Motion for Modification of Supervised Release Rule 32.1,” also fails for the reasons previously stated in the February 26, 2008 order and the reasons stated in the Government’s February 25, 2008 brief. Defendant’s third motion, seeking “an immediate review of his rule 59(e) motion,” is, by way of this order now moot. Finally, Defendant’s fourth motion, for summary judgment, is inapplicable to the present case and is wholly without merit. As a result, each of these motions will be denied.

Accordingly, for the foregoing reasons, **IT IS HEREBY ORDERED** that Defendant’s “Motion to Alter or Amend Judgment rule 59(e)” [docket entry #51]; “Motion for Modification of

Supervised Release Rule 32.1” [docket entry #52];“Motion for Instanter Review of Pro Se Petitioner’s Rule 32.1 Motion and Rule 59(e) Motion” [docket entry #54] and his June 12, 2008 “Motion for Summary Judgment” [docket entry #59] are **DENIED**.

SO ORDERED.

Dated: August 12, 2008

s/Sean F. Cox

HONORABLE SEAN F. COX
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on August 19, 2008, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

AUSA, and

I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Detrick Conerly.

s/Ruth A. Brissaud

Ruth A. Brissaud, Case Manager

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